



DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 272

[FNS-2016-0078]

RIN 0584-AE56

Supplemental Nutrition Assistance Program: Civil Rights Update to the Federal-State Agreement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This final rule updates the Supplemental Nutrition Assistance Program (SNAP) civil rights assurance template language for the Federal-State Agreement. These updates do not contain any new requirements and would codify protections already required by Federal law and existing policy.

DATES: This rule is effective [insert date 60 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, FNS, 1320 Braddock Place, Alexandria, Virginia 22314.

SNAPCPBRules@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule updates the SNAP Federal-State Agreement (FSA) civil rights assurance language to reflect protections already required by Federal law. The FSA is the legal agreement between the Department of Agriculture (the Department) and the State agency by which the State elects to operate SNAP, doing so in accordance with the Food and Nutrition Act of 2008 (the Act), SNAP regulations, the State Plan of Operation (State Plan), civil rights laws, and civil rights regulations. The Act requires that each State operating SNAP have a State Plan specifying details as to how the State conducts the program. The State Plan contains forms, plans, agreements, policy descriptions, and policy options required by Federal regulation and is cleared under OMB No. 0584–0083, Expiration date 08/31/2023. Program requirements at 7 CFR 272.2(a)(2) include the FSA as one such required component of the State Plan.

Although the State agency may propose alternative language that both the Department and the State agency may mutually agree to modify or supplement, requirements at 7 CFR 272.2(b)(1) contain standard FSA language for State agencies operating SNAP. As a Federal program, civil rights protections for SNAP applicants and recipients are important and essential. Codifying civil rights protections is vital to the success of SNAP because it supports the Department in providing equitable and superior customer service to all SNAP applicants and recipients. The protections included in this rule will prevent discrimination and systemic racism in the SNAP program that could negatively impact program access and outcomes. Integrating additional civil rights language into the FSA ensures a consistent application of these practices across the program. On November 17, 2016, at (81 FR 81015) the Department proposed a revision to the standard FSA language at 7 CFR 272.2(b)(1) in order to update this critical language to codify protections already required by Federal law and existing policy. The Department received five

comments on the proposed rule. Two comments were outside the scope of this rulemaking and the remaining three were strongly supportive of the proposed changes. The supportive comments agreed with FNS' actions to strengthen civil rights protections in SNAP.

Since standard FSA language was first established in SNAP regulations, Congress has passed additional civil rights legislation and more uniform administrative procedures have been established to support effective enforcement of the civil rights protections. Further, the U.S. Department of Justice (DOJ) recommended the addition of updated references in the Department's civil rights-related materials. The Department understands that similar language has been incorporated into agreements in other Federal agencies and has incorporated similar language in agreements in the Department's Child Nutrition Program and Women, Infants and Children (WIC) program, and Food Distribution programs. The Department also notes, by way of background, that the FSA in SNAP is unique within the Department's programs in that most other comparable agreements are not contained in the Federal regulations but in forms formally approved by the Office of Management and Budget (OMB).

This final rule incorporates references to additional civil rights legislation into the standard FSA language at section 272.2. Those references include Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), Title II and Title III of the Americans with Disabilities Act of 1990 (ADA), as amended by the ADA Amendments Act of 2008 (42 U.S.C. 12131-12189), and Executive Order 13166, "Improving Access to Persons with Limited English Proficiency." This final rule will incorporate those provisions into the regulations at 7 CFR 272.2(b)(1). The Department received no adverse comments on these revisions and is finalizing as proposed.

The Department also proposed to include language that would require States to comply with Department instructions, policy guidance, and other written directions. Departmental instructions, policy guidance, and written directions derive from statutory and regulatory authority and clarify existing legal requirements. Referencing those materials in the regulation is unnecessary, therefore the Department is removing such language. Therefore, the Department is not including reference to Department instructions, policy guidance, and other written directions in 7 CFR 272.2(b)(1).

In addition to updating the template language with references to additional civil rights legislation, the proposed rule identified additional language for inclusion based upon DOJ's recommendations. This includes denoting the Department's ability to track, analyze, and enforce the civil rights protections denoted in the FSA. Within these changes, the Department proposed to add that the State agency agreeing to follow civil rights requirements in the FSA is made in consideration of and for the purposes of obtaining Federal financial assistance. Next, the rule proposed to incorporate the State agency's existing obligation to compile data, maintain records, and submit records and reports as required to allow for effective enforcement of the civil rights provisions. This would include an assurance to allow Department personnel to review and access records, access facilities and interview personnel to ascertain compliance with nondiscrimination laws. Finally, the rule proposed to codify procedures to support enforcement of the nondiscrimination protections by updating the FSA to include a provision that the Department may seek judicial enforcement for violations of the FSA, adding assurances that the State agency and its successors are bound by the FSA. Again, these provisions would not only be responsive to DOJ's suggestions regarding nondiscrimination compliance language but also mirror language in other USDA programs. The Department received no adverse comments on these revisions and is finalizing as proposed.

FSAs, once signed by the chief executive officer of a State or authorized designee, are valid under 7 CFR 272.2(e)(1) until they are terminated. The Department will now refer to the “chief executive officer of a State” as the FSA signatory in 7 CFR 272.2(b)(1), in lieu of the term “Governor.” While not originally included in the proposed rule, the Department is making this technical change to SNAP regulations in this final rule to account for the District of Columbia’s governance structure. Section 272.2(e)(1) also provides that the FSA must be signed and submitted to FNS within 120 days after the publication of the regulations in final form and shall remain in effect until terminated. Although initially included in the regulations with other regulatory FSA requirements, the same procedure would apply to this update. Given the publication date of this final rule, all State agencies will update this language in the FSA at the time of their next State Plan submission and provide a copy of the same to the Department within 120 days of the effective date. Although State agencies are already required to abide by the new civil rights language as stated above, the Department believes it is important to incorporate the updated language at section 272.2(b)(1) in the FSA itself.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget (OMB), therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have an impact on small entities because the changes required by the regulations are primarily directed toward State agencies operating SNAP programs.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a ‘major rule’ as defined by 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

State administrative matching grants for SNAP are listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29114, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. The Department issued guidance in June 2016 to State agencies, and continues to do so annually, as part of a larger effort to help States ensure their State Plans are complete and up to date, which in part included direction to State agencies to incorporate updated civil rights provisions as an addendum to existing FSAs.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule does not have significant federalism implications. State agencies will be required to update the standard language contained in FSAs once if they have not already incorporated updated civil rights provisions through an addendum to their existing FSA. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws,

regulations or policies that conflict with its provisions or that would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with Department Regulation 4300-004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. The changes to SNAP regulations in this final rule are to incorporate references to additional civil rights legislation into the standard FSA language. After careful review of the rule's intent and provisions, FNS believes that the promulgation of this final rule will incorporate the State agency's existing obligation within FSAs. Additionally, the rule will likely result in improved, equitable, and superior customer service to all SNAP applicants and recipients.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Department notes that the regulatory changes finalized in this rule impact program applicants and participants equally regardless of Tribal status or residence. The Department is unaware of any current Tribal laws that could be in conflict with the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

The provisions in this final rule do not contain new, revised or altered information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995. The Department anticipates that this rule would have no to minimal time and cost impacts on the Federal Government and State agencies. State agencies are already required to follow the requirements contained in the added nondiscrimination references. Any existing time and cost burden would be related to administrative obligations to sign an updated Federal-State Agreement and to ensure appropriate recordkeeping to support enforcement of the nondiscrimination provisions as cleared under OMB Control Number 0584–0083; Expiration Date: 08/2023. FNS provides 50 percent of SNAP’s administrative cost reimbursement and so a portion of any minimal administrative costs would be offset by federal funding.

Since State agencies are already required to have these agreements, the impact of this provision is insignificant to the reporting or recordkeeping burden activities required under the Paperwork Reduction Act and therefore will not change the burden estimates already approved under OMB Number 0584-0083; Expiration Date: 08/2023. If FNS determines estimates have increased significantly, the Agency will publish a 60-day

Federal Register Notice to seek OMB approval. Other minimal burdens imposed on State agencies by implementation of this final rule are usual and customary within the course of their normal business activities.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 272

Alaska, Civil rights, Supplemental Nutrition Assistance Program, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 272 is amended as follows:

PART 272 – REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. Amend § 272.2 by revising paragraph (b)(1) to read as follows

§ 272.2 Plan of Operation.

* * * * *

(b) * * *

- (1) The wording of the Federal/State Agreement is as follows:

The SNAP State agency of _____ and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food and Nutrition Act of 2008, as amended,

implementing regulations and the FNS approved State Plan of Operation. The State agency and FNS USDA further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

Provisions

The State agrees to:

1. Administer the program in accordance with the provisions contained in the Food and Nutrition Act of 2008, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.
2. Assurance of Civil Rights Compliance: Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), section 11(c) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2020), Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendments Act of 2008 (42 U.S.C. 12131-12189) as implemented by Department of Justice regulations at 28 CFR part 35 and 36, Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” (August 11, 2000), and all requirements imposed by the regulations issued by the Department of Agriculture to the effect that, no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race, color, age, political belief, religious creed, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise

subject to discrimination under SNAP. This includes program-specific requirements found at 7 CFR part 15 *et seq.* and 7 CFR 272.6.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal assistance extended to the State by USDA under the authority of the Food and Nutrition Act of 2008, as amended. Federal financial assistance includes grants, and loans of Federal funds; reimbursable expenditures, grants, or donations of Federal property and interest in property; the detail of Federal personnel; the sale, lease of, or permission to use Federal property or interest in such property; the furnishing of services without consideration, or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient; or any improvements made with Federal financial assistance extended to the State by USDA. This assistance also includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the State agency agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are

any violations of this assurance, USDA, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the State agency, its successors, transferees and assignees as long as it receives assistance or retains possession of any assistance from USDA. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the State agency.

3. (For States with Indian Reservations only). Implement the Program in a manner that is responsive to the special needs of American Indians on reservations and consult in good faith with tribal organizations about that portion of the State's Plan of Operation pertaining to the implementation of the Program for members of the tribe on reservations.

4. FNS agrees to: 1. Pay administrative costs in accordance with the Food and Nutrition Act of 2008, implementing regulations, and an approved Cost Allocation Plan.

2. Carry out any other responsibilities delegated by the Secretary in the Food and Nutrition Act of 2008, as amended.

Date_____

Signature_____

(Chief Executive Officer of a State or Authorized Designee)

Date_____

Signature_____

(Regional Administrator, FNS)

* * * * *

Cynthia Long
Administrator
Food and Nutrition Service

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